

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN L. LUCKETT and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, Mich.

*Docket No. 97-158; Submitted on the Record;
Issued September 22, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof to establish that he had any disability resulting from his work injury of March 1, 1995.

On March 7, 1995 appellant, then a 40-year-old casual (temporary) mail carrier, filed a claim for a left knee injury sustained on March 1, 1995 when he slipped on ice. The Office of Workers' Compensation Programs accepted the claim for a left medial meniscus tear and authorized a left knee arthroscopy.

The Butterworth Occupational Health Facility, where appellant received initial care, referred appellant to Dr. James E. Bakeman, a Board-certified orthopedic surgeon, on March 6, 1995. Dr. Bakeman noted on an undated CA-17 form that appellant was only capable of doing a "sit down" job until he had his surgery. By report dated March 13, 1995, Dr. Bakeman indicated that appellant twisted his left knee while at work and developed pain along the medial joint line. He noted catching, popping and sharp pain and that there were positive Steinman's and McMurray's tests. Dr. Bakeman diagnosed acute injury to a mildly degenerative medial meniscus. Dr. Bakeman noted that appellant failed to respond to conservative treatment and recommended an arthroscopic evaluation be performed. In a work slip dated March 29, 1995, Dr. Bakeman indicated that appellant was off work from March 6 to 28, 1995 and that he should perform sit down only work until surgery was performed.

The employing establishment controverted payment of continuation of pay as the evidence did not establish that appellant was totally disabled after March 6, 1995. The employing establishment noted that conversation with Dr. Bakeman's office revealed that appellant informed Dr. Bakeman that no light duty was available and that he advised appellant not to work until after his surgery. The employing establishment further noted that Dr. Bakeman never rendered appellant totally disabled. The employing establishment stated that appellant was a casual (temporary) employee, and that his term was due to expire on April 23, 1995. The employing establishment extended appellant's temporary appointment so that the claim could be properly managed.

Appellant returned to light-duty work on March 29, 1995 and worked until he underwent left arthroscopic knee surgery on May 19, 1995.

By letter dated April 26, 1995, the Office advised appellant that his claim was approved for a left medial meniscus tear and left knee arthroscopy, and that further development was being taken to determine whether or not continuation of pay from March 7 through 28, 1995 was payable. Appellant was advised that it was his burden to provide medical evidence to support that he was totally disabled during the above period of time.

On May 19, 1995 appellant underwent left arthroscopic knee surgery. Dr. Bakeman, however, provided no opinion concerning total disability.

By decision dated June 30, 1995, the Office found that appellant was not entitled to compensation for the period March 7 through 28, 1995 on the grounds that the evidence failed to demonstrate that appellant was totally disabled from working during that period of time.

In an undated letter, which the Office received on July 29, 1995, appellant requested an oral hearing before an Office hearing representative. A hearing was held on May 14, 1996 at which time appellant testified about his injury and the subsequent events pertaining to his claim. Appellant stated that he returned to light-duty work on March 29, 1995 until his surgery, was off 10 days post surgery, then he returned to light duty until he was let go in the end of July when his tour of duty ended. Appellant further stated that he never falsified anything to the Office or to Dr. Bakeman regarding his claim.

Subsequent to the Office's decision, the Office received a June 30, 1995 letter from Dr. Bakeman. Dr. Bakeman stated that appellant was off work from the time he first saw him on March 6, 1995 until 28, 1995, secondary to pain related to his medial meniscus tear. He noted that appellant was initially scheduled for a March 20, 1995 surgery but that was cancelled due to concerns regarding workers' compensation coverage and that it was necessary for him to be off work the week after that cancellation until his return to work, secondary to pain management problems. Dr. Bakeman further noted that appellant had surgery on May 19, 1995, at which point a left knee, posterior horn, medial meniscus tear was identified.

Dr. Bakeman continued to provide ongoing reports noting that appellant had continuing difficulties in the knee and that he suspected that this was due to either persistent arthritic changes or a recurrent tear of the same meniscus. A magnetic resonance imaging (MRI) scan performed on February 4, 1996 noted joint effusion, medial femoral condyle and medial tibial plateau bone bruise, medial collateral ligament sprain, debris within the joint effusion, and noted that if appellant did not have a partial medial meniscectomy, then a severe post traumatic or degenerative tear was present.¹

By decision dated July 1, 1996, the Office hearing representative affirmed the Office's June 30, 1995 decision on the grounds that the medical evidence of record was insufficient to

¹ By letter dated April 4, 1996, the Office denied approval for a repeat arthroscopy after an MRI scan was reviewed by a medical consultant. The Board, however, need not concern itself with this issue as appellant has not appealed this aspect of the claim.

establish that appellant was totally disabled for the period March 7 through 28, 1995 due to his accepted injury.

As the Office was developing appellant's claim for total disability for the period March 7 through 28, 1995, appellant filed a CA-7 claim for compensation on account of traumatic injury for the period of July 22 through October 29, 1995.

In a December 11, 1995 letter, the Office advised appellant that he needed to submit objective medical evidence with a physician's rationalized opinion as to how his condition and disability is a result of the March 1, 1995 work injury. No new evidence was submitted into the record.

By decision dated February 9, 1996, the Office found that appellant was not entitled to compensation for the period July 22 through October 29, 1995 on the grounds that no medical evidence had been received to support that appellant's absence from work during the described period was as a result of the previously approved work incident or the accepted conditions.

The Board finds that appellant has failed to meet his burden of proof to establish that he had any disability resulting from his work injury of March 1, 1995.

When an employee, who is disabled from a job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative, and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.² This burden further includes the necessity of furnishing medical evidence from a qualified physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.³ Where no such rationale is present, medical evidence is of diminished probative value.⁴

In the present case, it is not disputed that appellant sustained an injury to his left knee and that he was totally disabled from March 1 through 6, 1995. The medical evidence of record, however, fails to support total disability from March 7, 1995 through the date of appellant's surgery. Although Dr. Bakeman stated that appellant was off work from the time he first saw him on March 6 until 28, 1995 secondary to pain management problems related to his medial meniscus tear, his report is insufficient to meet appellant's burden of proof as Dr. Bakeman did not offer any explanation or rationale as to how appellant's left meniscus tear and subsequent complaints of pain resulted in a total disability.⁵ While Dr. Bakeman may have told appellant

² *Cynthia M. Judd*, 42 ECAB 246, 250 (1990); *Terry R. Hedman*, 38 ECAB 222, 227 (1986).

³ *Jerry A. Miller*, 46 ECAB 243 (1994); *Ezra D. Long*, 46 ECAB 791 (1995); *Ronald M. Cokes*, 46 ECAB 967 (1995).

⁴ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁵ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

to stay off work until his surgery, that statement alone, without supporting medical evidence, is insufficient to meet appellant's burden of proof. Moreover, in light of the fact that appellant returned to light-duty work on March 29 and worked until his surgery on May 19, 1995 lends support to the fact that appellant was not totally disabled due to his work injury of March 1, 1995. Thus, the evidence of record does not establish that appellant was totally disabled from March 7 through 28, 1996.

Additionally, there is no medical evidence which provides the necessary causal relationship to establish that appellant's disability for the period July 22 through October 29, 1995⁶ was causally related to the accepted injury. On December 11, 1995 the Office advised appellant of the need to submit objective medical evidence containing a physician's rationalized opinion regarding causal relationship and, by the time the decision was rendered on February 9, 1996, appellant had not submitted any evidence.

Thus, as appellant has failed to provide any rationalized medical evidence establishing that he sustained a medical condition or disability on and after March 7 through 28, 1995 and any time after July 22, 1995 causally related to his March 1, 1995 employment injury or any other factors of his employment, he has failed to discharge his burden of proof.

The July 1 and February 9, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 22, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁶ It is noted that appellant's temporary tour-of-duty expired on July 21, 1995.